

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service)	Application No. C-4807
Commission, on its own motion, to investigate)	
ways to accelerate the deployment of Broadband)	
consistent with Section 706 of the)	
Telecommunications Act of 1996)	

**COMMENTS OF NE COLORADO CELLULAR, INC. D/B/A VIAERO WIRELESS
PURSUANT TO COMMISSION ORDER OPENING DOCKET
AND SETTING HEARING**

NE Colorado Cellular, Inc. d/b/a Viaero Wireless (“**Viaero**”) is pleased to submit the following comments in response to the Nebraska Public Service Commission's (the “**Commission**”) Order Opening Docket and setting Workshop in this Docket dated December 15, 2015 (the “**Opening Order**”).

Viaero supports the Commission's interest in facilitating the improvement of government policies for access to rights-of-way to promote the efficient deployment of broadband infrastructure. In furtherance of that objective, Viaero offers the following observations and suggestions to remove barriers to the deployment of broadband infrastructure.

**1. THE COMMISSION SHOULD ALSO SEEK TO IMPROVE GOVERNMENT
POLICIES FOR ACCESS TO RIGHTS-OF-WAY TO PROMOTE THE
DEPLOYMENT OF WIRELESS BROADBAND SERVICES.**

While the Opening Order states that the intention of this Docket is to improve government policies to encourage the efficient deployment of broadband by "carriers receiving federal CAF support", improvement of government policies for access to rights-of-way must also include broadband infrastructure being deployed by wireless carriers. Wireless providers also frequently need access to rights-of-way for installation of fiber used for backhaul of traffic to a switch, for increased speeds and capacity, for linkage to other transport facilities, for enhanced reliability, and even redundancy in certain situations. In addition, access to rights-of-way may

be necessary to provide power lines to operate tower facilities and to provide security. Clearly, all broadband providers, not just ILECs, need efficient access to rights-of-way on a regular basis in order to deploy essential broadband infrastructure.

Wireless carriers play an ever-critical role in providing broadband infrastructure and services throughout Nebraska. Efficient access to rights-of-way and cell tower sites is essential to the deployment of ubiquitous wireless broadband coverage and the vital benefits of mobile broadband services. The Commission's most recent Annual Report to the Legislature states that there are 1,300,191 (65.03%) wireless subscribers and 699,118 (34.97%) wireline subscribers in Nebraska.¹ Some consumers utilize both services and are included in both categories. A recent study by the Pew Research Center reported that nearly two-thirds of Americans now use “smartphones” for online access.² According to the recent Broadband in Nebraska Report prepared by the Nebraska Broadband Initiative in December of 2014, over 81% of businesses in Nebraska use “web-enabled” mobile phones.³ Further, a recent CTIA Study reported that the amount of data on mobile networks increased over 25% in just one year from 2013 to 2014.⁴ This dramatic increase in data usage is attributable to the increased use of mobile devices for broadband access. Clearly mobile broadband usage is exploding as the benefits of robust mobile broadband services become more important to consumers.

Clearly, Nebraska consumers benefit from access to broadband services from ILECs (and fixed providers) and mobile providers alike. Consequently, the Commission should strive to improve government policies and develop ways to remove obstacles and create best practices to

¹ Nebraska Public Service Commission 2015 Annual Report on Telecommunications to the Legislature, September 30, 2015, p. 132.

² Aaron Smith, *U.S. Smartphone Use in 2015*, Pew Research Center, 2-3 (April 1, 2015), http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf.

³ Nebraska Information Technology Commission, *Broadband in Nebraska Current Landscape and Recommendations* (December 22, 2014), p. 12.

⁴ CTIA, *Annual Wireless Industry Survey Top Line Results* (June 2015), http://www.ctia.org/docs/defaultsource/Facts_Stats/ctia_survey_ye_2014_graphics.ped?sfvrsn=2.

promote efficiencies for aggressive broadband deployment of both fixed and mobile broadband services.

2. ALL PROVIDERS OF BROADBAND SERVICES, WHETHER MOBILE OR FIXED, WOULD BENEFIT FROM STREAMLINED, UNIFORM AND AFFORDABLE REGULATIONS, ORDINANCES AND PROCESSES FOR MANAGING AND PERMITTING ACCESS TO RIGHTS-OF-WAY, PUBLIC INFRASTRUCTURE AND REGULATED AREAS.

Obtaining access to rights-of-way, public infrastructure, and regulated areas is challenging for all providers of broadband services. While counties, municipalities and the State have legitimate interests and statutory authority to regulate the rights-of-way and land uses in their respective jurisdictions, there is no statewide set of rules or policies which provide a uniform, consistent or integrated regime for processing, reviewing or approving applications for access to or permission to use these critical assets. As a result, providers of broadband services regularly face conflicting rules and regulations that make the access process extremely cumbersome, expensive and untimely. Consequently, these uncoordinated and laborious regulatory processes serve as significant barriers and obstacles to the efficient and timely deployment of broadband infrastructure across the state.

In particular, mobile broadband providers are regularly confronted with differing state, county and municipal regulations and ordinances governing the siting and installation of wireless facilities, including cellular antennas and towers. While frequently authorized under the “zoning” and “public safety” authority of the county or municipality, these regulatory regimes vary significantly in complexity and burdens on the mobile provider. Some of these regulatory systems require wireless providers to justify why they want to place a facility or a colocation array in a particular location or on a particular tower, including radio frequency studies, signal propagation analysis and comparisons, and detailed business justifications. Some regulatory

systems even require studies and technical analysis of facilities not owned or controlled by the wireless applicant, including structural issues and aesthetic and landscaping requirements, that the applicant cannot control or require of the facility owner. Frequently, these regulatory systems have been crafted and are administered by third-party contractors who charge significant application and review fees to the wireless applicant for evaluation of their applications. The third-party administrator then makes compliance/non-compliance recommendations to the government entity. Such regulatory systems often result in significant fees and costs to the applicant and long delays in obtaining approvals and permits, including building permits, necessary to proceed with deployments. It is not unusual for these processes to take a year or more before obtaining approval. In some cases, litigation has been necessary to obtain approval.

Similarly, access to municipal or county owned conduit facilities may often require a franchise agreement, access fees and residual financial participation arrangements and service benefits to the municipality or county. Such requirements also slow down the deployment of broadband facilities and increase the cost of providing services.

In the absence of uniform statewide processes and coordinated regulatory regimes, broadband deployment in Nebraska is fraught with inconsistent, time consuming and expensive regulatory systems that serve as barriers to the efficient deployment of broadband infrastructure for all providers of broadband service, whether fixed or mobile.

3. THE COMMISSION SHOULD SERVE AS A CONVENER AND FACILITATOR OF STAKEHOLDERS TO EVALUATE WAYS TO ADOPT AND IMPLEMENT UNIFORM AND STREAMLINED REGULATORY PROCESSES FOR OBTAINING APPROVALS AND PERMITS FOR THE DEPLOYMENT OF BROADBAND INFRASTRUCTURE.

While the Commission has no statutory authority to unilaterally effect changes to the statutory and regulatory regimes of state and local government entities or private sector parties, it

does have a vested interest in promoting important state policies dedicated to the provision of comparable accessibility to affordable telecommunications and broadband services to all Nebraskans. (*See*, Neb Rev Stat § 86-317, and NUSF-77, Progression Orders 3 and 7, entered respectively on June 14, 2011, and January 15, 2013).

Further, the Legislature has provided that the Commission, and the Commission alone, may regulate telecommunication providers and that the Nebraska Telecommunications Regulation Act preempts and prohibits any regulation of a telecommunications company by counties, cities, villages, townships, or any other local government entity. (*See*, Neb Rev. Stat. §86-123).

Given these powerful public policy directives, the Commission is in a unique position to facilitate the creation of new uniform public policies and regulatory systems which improve processes for access to important public facilities and rights-of-way that are critical to the promotion of broadband infrastructure deployment. Its ability to investigate issues of statewide importance can serve as an information resource for all stakeholders, which is evident by its establishment, on its own motion, of this very Docket.

The Commission possesses the authority to confer with and convene stakeholders from both the public sector and the private sector to discuss, evaluate and coordinate specific actions at either the local or state level. A prime example of the process is the recent series of meetings regarding the creation of proposed legislation regarding the implementation of a new statewide NG911 system. Several meetings held at the NACO offices in Lincoln involved the Commission, the League of Nebraska Municipalities, PSAP operators, county officials, law enforcement officials, representatives of state government and the Nebraska Legislature, private telecommunications company representatives, technical representatives of NG911 providers and

other interested stakeholders. Stakeholders at these meetings discussed legal issues, implementation matters, funding and financing issues, operational and management issues, political considerations and other matters deemed important to the topic of constructing, implementing and maintaining a new NG911 system throughout the State. From these meetings consensus was achieved to draft and submit proposed legislation regarding the implementation of a new 911 System that was introduced on January 13, 2016, as LB938

This form of collaboration and facilitation, combined with the information resources available through the Commission's investigatory processes, can be used effectively by the Commission to help shape and implement policies and regulations which will promote competitively neutral broadband infrastructure deployment and remove barriers and impediments to both fixed and mobile broadband infrastructure deployment

4. CONCLUSION

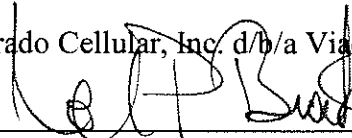
Viaero appreciates the opportunity to provide these Comments to the Commission and strongly urges the Commission to expand this investigation to include both fixed and mobile providers of broadband infrastructure. Clearly all broadband providers share many common barriers and impediments to the deployment of broadband infrastructure, and the Commission's investigation should recognize the common benefit to all Nebraskans of policies that apply to all broadband providers. Clearly the National Broadband Plan contemplated effective rules, policies and regulatory regimes regarding access to rights-of-way that would help ensure competition in both fixed and mobile broadband services.

Viaero is grateful for the opportunity to participate in this Docket.

Respectfully submitted this 20th day of January, 2016.

NE Colorado Cellular, Inc. d/b/a Viaero Wireless

By:


Loel P. Brooks, #15352
BROOKS, PANSING BROOKS, PC, LLO
1248 "O" Street, Suite 984
Lincoln, NE 68508-1424
(402) 476-3300
lbrooks@brookspanlaw.com

and

Eric L. Preston, #21380
Viaero Wireless
1224 W. Platte Avenue
Fort Morgan, Colorado 80701
eric.preston@viaero.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of January, 2016, an electronic copy of the Comments of Viaero in C-4807 were delivered via email to:

Gene Hand
Nebraska Public Service Commission
1200 "N" Street, Suite 300
Lincoln, NE 68509-4927
gene.hand@nebraska.gov

Deena Ackerman
Nebraska Public Service Commission
1200 "N" Street, Suite 300
Lincoln, NE 68509-4927
deena.ackerman@nebraska.gov

A handwritten signature in black ink, appearing to read 'Loel P. Brooks', is written over a horizontal line.

Loel P. Brooks